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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/080,959 | 02/22/2002 | Patricia Cruz-Perez | 0001-00001 | 1590 |

7590 02/27/2003

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EXAMINER

WILDER, CYNTHIA B

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 1637 | 6 |

DATE MAILED: 02/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

| | |
|--------------------------------------|--|
| Application No. 10/080,959 | Applicant(s) CRUZ-PEREZ et al. |
| Examiner Cynthia B Wilder | Art Unit 1637 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Dec 9, 2002

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-18 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) _____ is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims 1-18 are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

4) Interview Summary (PTO-413) Paper No(s). _____

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

6) Other: _____

DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-, 2, 12-18, drawn to an amplification method for detecting fungus, classified in class 435, subclass 91.2.
 - II. Claims 3-11, drawn to primer and probe set, classified in class 536, subclass 24.3 and 24.33

Sequence Election Requirement Applicable to All Groups

In addition, each Group detailed above reads on patentably distinct SEQ ID Number sets. Each of the sequences or set of sequences are patentably distinct because the sequences are structurally unrelated sequences and a further restriction is applied to each Group. Applicant must further elect one (single) set of SEQ ID Numbers selected from the group consisting of SEQ ID NOS: 1, 2 and 5 or SEQ ID NOS: 3, 4 and 5 to be examined with the corresponding Group I or II. **Applicant is advised that examination will be restricted to only the elected *single* set of SEQ ID NOS: and should not be construed as a species election.**

2. The inventions are distinct, each from the other because of the following reasons: **Inventions II and I are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a**

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materially different process of using that product (MPEP § 806.05(h)). In the instant case, the product of Group II drawn to a primer and probe set can be used in a materially different process besides in methods of amplification for detecting a fungus. The primer and probe set can be used in methods of oligonucleotide-directed mutagenesis or in methods of nucleic acid cloning or in methods of purification or in antisense studies or in aptamer studies.

3. Because these inventions are distinct for the reasons given above and the search required for any one Group is not required for any other Group, restriction for examination purposes as indicated is proper.

4. A telephone call was made to Tony Cole on January 7, 2003 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

A fully responsive reply will comprise the election of both a Group and a particular single sequence set to be examined.

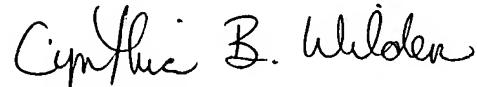
5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventor ship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventor ship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Cynthia Wilder whose telephone number is (703) 305-1680. The examiner can normally be reached on Monday through Thursday from 9:30 am to 6:30 pm and on Friday from 9:30 am to 1:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion, can be reached at (703) 308-1119. The official fax phone number for the Group is (703) 308-4242. The unofficial fax number is (703) 308-8724.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Group's receptionist at (703) 308-0196.



Cynthia B. Wilder, Ph.D.
Patent Examiner
Art Unit 1637

cbw
February 24, 2003